WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3995

IN THE MATTER OF:		Served September 3, 1992
Petition of UNITED MANAGEMENT CORPORATION for Rulemaking Concerning Insurance	)))	Case No. MP-92-31

By petition filed July 24, 1992, United Management Corporation, trading as Passenger Express (UMC or petitioner), seeks a rulemaking for the purpose of amending Commission Regulation No. 58-03(c), which specifies the minimum public liability insurance levels for carriers requiring operating authority under the Compact, Title II, Article XI, Section 6(a). This proceeding has been docketed in accordance with Commission Rule No. 9-01(3).

DISCUSSION AND CONCLUSION

Commission Regulation No. 58-03(c) provides that carriers with operating authority unrestricted as to vehicle seating capacity must maintain a minimum of $5 million in personal injury and property damage insurance. Carriers with operating authority restricted as to vehicle seating capacity -- i.e., 15 persons or less -- must maintain a minimum of $1.5 million. Hence, the minimum level of public liability insurance a WMATC carrier must maintain is determined by whether or not its operating authority is restricted as to vehicle size.

UMC holds Certificate of Authority No. 172, which is unrestricted as to vehicle size. UMC, therefore, must insure all of its vehicles for $5 million, regardless of size. UMC requests that Regulation No. 58-03(c) be amended to permit UMC to insure its smaller vehicles, those with a seating capacity of 15 persons or less, for only $1.5 million. UMC would still be required to insure its larger vehicles, those with a seating capacity of 16 persons or more, for $5 million. Thus, the minimum insurance requirements proposed by UMC would run with the vehicle, not the certificate.

The Commission declines UMC's invitation to remake Regulation No. 58-03(c). Not only has the Commission considered proposals such as that now presented by UMC, we have actually practiced it for many years. We found that practice both unsound and administratively unmanageable, and it was terminated by Order No. 3600,[1] which required a single certificate of insurance for each carrier, precluding even so-called "layered" coverage of primary and excess insurance. By

[1] In re Adoption of RULES OF PRACTICE AND PROCEDURE AND REGULATIONS, No. MP-91-05, Order No. 3600 (Jan. 17, 1991).

Order No. 3623,[2] we subsequently permitted layered coverage but declined a request to reinstate the practice abandoned in Order No. 3600, permitting vehicle-specific coverage.[3]

Contrary to the central premise of UMC's petition, Regulation No. 58-03(c) is consistent with the Interstate Commerce Commission's application of 49 CFR § 1043.2(b)(1)(ii). According to the Interstate Commerce Commission (ICC), the $5 million minimum insurance requirement imposed by that regulation applies to "passenger carriers operating <u>any</u> vehicle with a seating capacity of 16 or more passengers."[4] The $1.5 million minimum applies to "carriers operating <u>only</u> vehicles with a seating capacity of 15 passengers or less...."[5] The ICC's application form for passenger carrier authority mirrors this interpretation.[6]

When the current financial responsibility minimums were considered in 1985, in response to changes at the federal level, the Commission noted its long history of mandating insurance requirements that were consistent with those of the ICC. The Commission was concerned, however, about the economic impact the new requirements might have on WMATC carriers and their customers. While approving the higher minimums, the Commission sought to soften that financial impact by permitting mixed-fleet carriers to stratify insurance coverage according to vehicle size, as noted above. Five years of less than satisfactory experience with these exceptions to federal policy and the advent of a new Compact (that broadens grants of operating authority and encourages expansion in the number of authorized carriers) dictated the Commission's current stance. The Commission's current liability insurance requirements are warranted by the circumstances and are once again consistent with those imposed by the ICC.

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[2] <u>In re Adoption of RULES OF PRACTICE AND PROCEDURE AND REGULATIONS</u>, No. MP-91-05, Order No. 3623 (Mar. 8, 1991).

[3] <u>See</u> Letters from Harrison Brand & Co. to WMATC of Feb. 19 & Mar. 18, 1991, re: <u>In re Adoption of RULES OF PRACTICE AND PROCEDURE AND REGULATIONS</u>, No. MP-91-05, Order No. 3600 (Jan. 17, 1991).

[4] <u>Petition for Rulemaking of the American Bus Ass'n Concerning Enforcement of Minimum Ins. Stds.</u>, 1986 Fed. Car. Cas. (CCH) ¶37,233 at 47,142 n.2 (1986) (emphasis added).

[5] <u>Id</u>. at 47,142 n.2 (emphasis added).

[6] <u>See</u> FORM OP-1 at 3-4 (effective June 1, 1990); <u>see also</u> <u>ICC v. Falcon Motor Coach Co.</u>, No. 90-C-5788, 1990 WL 156610, at *1 (N.D. Ill. Oct. 5, 1990) ("Passenger carriers which use vehicles seating 16 or more persons must have a minimum of $5,000,000 in public liability insurance coverage.").

THEREFORE, IT IS ORDERED:

That the petition of United Management Corporation, trading as Passenger Express, for a rulemaking to amend Commission Regulation No. 58-03(c) is hereby denied.

BY DIRECTION OF THE COMMISSION: COMMISSIONERS DAVENPORT, SCHIFTER AND SHANNON:

William H. McGilvery
Executive Director